Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications	)	PS Docket No. 11-153
	)	
Framework for Next Generation 911 Deployment	)	PS Docket No. 10-255
	)	
	)	

To: Chief, Public Safety and Homeland Security Bureau

REPLY COMMENTS OF
THE BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY

The Boulder Regional Emergency Telephone Service Authority ("BRETSA"), by its attorney, hereby submits its reply comments on the November 16, 2016 request of the Maine Emergency Services Bureau ("Maine") for the Commission to clarify the point of demarcation for text-to-911 between wireless providers and Maine's NG9-1-1 system ("Request").[1]

I. Introduction.

This proceeding concerns the anomaly in which providers of telephony services are responsible for delivery, and the cost of delivery, of their customers' calls; *except the most important calls their customers make: calls for emergency assistance*.[2] The Commission should not further excuse providers from responsibility for delivery of their customers calls and messages to 9-1-1, and thus not permit providers to transfer to PSAPs or 9-1-1 authorities the

[1] BRETSA is a Colorado 9-1-1 Authority which establishes, collects and distributes the Colorado Emergency Telephone Surcharge to fund 9-1-1 service in Boulder County, Colorado.
[2] Not only do 9-1-1 Authorities bear significant costs of 9-1-1 call routing and delivery, but state laws generally grant carriers immunity or limited immunity from liability for failure to properly deliver 9-1-1 calls.

costs of transport and routing of *intra*state 9-1-1 calls and messages to and from nationally or regionally consolidated MSCs or NG9-1-1 Data Complexes.[3]

II. Maine's Request Is Not Governed By Prior Agreement Or Commission Decision.

The provider community contends that Maine's request is governed by prior agreement and Commission action pertaining to interim text-to-911 service.[4] However the agreement and terms they cite pertain to delivery of text-to-911 messages *to the PSAP*, not delivery of 9-1-1 calls to a state ESInet for routing to the appropriate PSAP. The provisions of the agreement and decision they cite do not address delivery of 9-1-1 calls to state ESInets for routing and transport to the appropriate PSAPs.

As Comtech (successor in interest to TCS) states, "reducing the number of TCC connections to just that of the ESInet and not each individual PSAP is an already significant cost savings."[5] Thus the network elements and costs for which carriers would be responsible in the context of delivery of text-to-911 messages to the state ESInet will be more akin to that for which they are responsible in the context of voice calls to 9-1-1, connection and delivery of the calls to the state 9-1-1 system (9-1-1 Selective Router) rather than to each individual PSAP, and should not unreasonably burden providers.

[3] While state and local authorities are facing difficulties in funding the transition to NG9-1-1 and would be disadvantaged by the requirement to fund delivery of intrastate calls back into the state network from regional MSCs and NG9-1-1 complexes established to advantage the providers; the consistent application of transport requirements to providers will maintain a level playing field without competitive disadvantage to any provider.

[4] CTIA Comments at 2, 3-6. AT&T Comments at 3. Comtech Comments at 2, 5-6.

[5] Comtech Comments at 6. Comtech inexplicably appears to argue that direct provision of text-to-911 messages by TCCs to PSAPs is preferable to integration of text-to-911 into NG9-1-1 and imposes greater cybersecurity and other responsibilities on PSAPs, rather than leveraging economies of scale. Comtech comments at 7. However even where a TCC routes text-to-911 messages to a state ESInet, an individual PSAP which wished to directly receive text-to-911 messages from the TCC could do so at its expense under the agreement for interim text-to-911 delivery.

III. The Resolution Urged By The Provider Community Would Result In A Substantial Reassignment Of Costs Of 9-1-1 Call Delivery To The 9-1-1 Community.

Comtech also points out that there are currently just two Text Control Centers ("TCCs") nationwide.[6] West Safety Services (formerly Intrado) has also deployed just two NG9-1-1 Data Complexes nationwide,[7] while (i) AT&T has been awarded the contract for FirstNet, (ii) it is anticipated that the FirstNet provider will also provide ESInet facilities for 9-1-1 traffic in many states to spread the costs of Firstnet network facilities among a greater user-base or greater volume of traffic,[8] and (iii) BRETSA understands AT&T has announced it will be deploying a nationwide ESInet.

In their comments, CTIA and AT&T argue that proper application of *King County*[9] would make the egress side of the TCC the appropriate demarcation point for interim text-to-911 solutions (and they claim that delivery of text-to-911 messages to a state ESInet rather than to an individual PSAP falls within the definition of interim text-to-911 solutions, as discussed above).

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[6] Comtech Comments at 2.

[7] West (Intrado) has argued that such a limited number of NG9-1-1 Data Complexes does not increase the likelihood of a 9-1-1 outage, while BRETSA has pointed out that it increases the scope of any outage from failure of a Data Complex. An outage which is broader in scope may also tax public safety resources to a greater extent than one which is more limited in scope, and quickly exhaust any excess capacity of emergency response systems, even though emergency response is essentially local in nature. *See, e.g.*, Intrado June 30, 2014 Comments in PS Docket No. 14-72, at 2-4, available at https://ecfsapi.fcc.gov/file/7521356437.pdf ; BRETSA August 26, 2016 Comments in PS Docket No. 15-80, ET Docket No. 04-35 and PS Docket No. 11-82, at 22, available at https://ecfsapi.fcc.gov/file/10827031927215/BRETSA%20160826%20Comments%20PS%2015-80%20Outage%20Reporting.pdf. Nevertheless, it appears that there will be a far fewer number of NG9-1-1 Selective Routers than there are legacy 9-1-1 Selective Routers/state- or regional- (within a state) 9-1-1 systems.

[7] Providers have argued in state proceedings that the transmission of 9-1-1 calls or messages over jurisdictionally interstate lines precludes states from exercising jurisdiction over those calls or messages, notwithstanding that jurisdiction of a call is determined by whether or not the originating and terminating location of a call are within the same state. The rationality of this precedent is underscored by the potential for providers to intentionally route calls across state lines to deprive states of jurisdiction.

[8] In many cases, PSAPs and the agencies which operate the PSAPs and are users of ESInet services, will also be the users of FirstNet services since PSAPs dispatch First Responders as well as receive and process 9-1-1 calls, and the First Responders employed by or which volunteer with the agencies are dispatched by and communicate with the PSAPs over public safety radio.

[9] Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, to Maryl R. Davis, E911 Program Manager, King County E-911 Program Office, (WTB May 7, 2001), 2001 WL 491934, Available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-212689A1.pdf; and *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington*, Order on Reconsideration, 17 FCC Rcd 14789, para. 3 (Adopted: May 14, 2002) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-02-146A1.pdf .

However extending their reasoning to NG9-1-1 service provided through two or another limited number of NG9-1-1 Data Complexes nationwide, would make the egress side of the NG9-1-1 Data Complex the demarcation point for *all* formats of 9-1-1 calls.

Thus under the resolution pressed by CTIA, AT&T and Comtech, following the transition to NG9-1-1 PSAPs or state and local 9-1-1 authorities will for the first time be required to pay the cost of transport to their state and state 9-1-1 networks (ESInets) of *intra*state 9-1-1 calls which the provider community found more cost-effective to transport away from the state to consolidated or regional MSCs and/or NG9-1-1 Data Complexes. The 9-1-1 community will be required to subsidize network deployment decisions which are most efficient and economical for the providers.[10]

A further complication of the resolution pressed by CTIA, AT&T and Comtech is that the NG9-1-1 Data Complex represents a collection of call processing and routing functions, rather than the specific location at which all of those functions and related data sources are provided and maintained. In fact, functions and related data sources may be sited in a number of diverse locations. The selection of the nominal location of the Data Complex may be more advantageous to some PSAPs and state and local 9-1-1 Authorities than others, and arbitrary.

Under no circumstance should state or local authorities be required to pay to have *intra*state 9-1-1 calls and messages delivered into the intrastate 9-1-1 system, whether the legacy

[10] Providers have argued in state proceedings that the transmission of 9-1-1 calls or messages over jurisdictionally interstate lines precludes states from exercising jurisdiction over those calls or messages, notwithstanding that jurisdiction of a call is determined by whether or not the originating and terminating location of a call are within the same state. *See, e.g.*, Testimony of Ben Aron, CTIA, October 20, 2015 Workshop in Colorado Public Utility Commission Proceeding No. 15R-0318T, at 29, available at https://www.dora.state.co.us/pls/efi/EFI_Search_UI.search. *But see, National Association of Regulatory Utility Commissioners v. F.C.C.*, 746 F.2d 1492, 1498 (1984); 47 U.S.C. §332(c)(3)(A) ("[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, *except that this paragraphs shall not prohibit a State from regulating other terms and conditions of commercial mobile services*." Emphasis added).

9-1-1 Selective Router and network or NG9-1-1 ESInet, from MSCs and NG9-1-1 Data Complexes located across the country.

IV. This *Is* A Multistakeholder Process.

While CTIA and AT&T argue for a multistakeholder process to address the issues raised by the State of Maine; this proceeding *is* a multistakeholder process. More importantly, this process offers all stakeholders an equal voice, and with the Commission's participation as an arbiter of the issues assuring that a reasonable decision is made on the facts rather than through wielding of market power.

While the provider community may claim to face commercial pressures to provide reliable and effective 9-1-1 service, they have not supplied evidence of any decrease in subscription to their services, revenues or share value as a result of any of the significant 9-1-1 outages that have occurred over the last several years. When it comes to market power, how high must the cost of delivery of 9-1-1 calls into the state ESInet or PSAP be for a state or PSAP to be able to decline to pay that price and refuse to accept/receive calls from constituents requiring emergency assistance? The demand for delivery of 9-1-1 calls and messages to PSAPs is certainly price inelastic. Thus, absent a decision by the FCC, providers can simply refuse to deliver 9-1-1 texts or calls to the state ESInet unless the state or local authorities sign a contract agreeing to pay the price demanded by the provider.

Note that while Comtech stated that the state of Washington, among others, had agreed to pay the cost of delivery of text-to-911 messages into the state ESInet,[11] the state of Washington filed comments herein *supporting* Maine's request. Maine filed its letter after failing to reach agreement through "arms-length negotiations" (refusing to take responsibility for payment for

[11] Comtech Comments, at 7.

delivery of intrastate traffic back into the state), when Maine PSAPs *have to* receive the text-to-911 messages, but Comtech believes it has no obligation to deliver them to Maine's ESInet.

V. Conclusion.

The provider community should not be permitted to transfer costs of delivery of 9-1-1 calls and messages to state 9-1-1 systems and networks/ESInets, and to require states to subsidize provider business decisions regarding location and/or consolidation of MSCs and NG9-1-1 Data Complexes. (Nor should the provider community be permitted to transfer to PSAPS and 9-1-1 authorities the costs of transporting 9-1-1 calls and messages to out-of-state MSCs and/or Data Complexes for processing and routing to the correct PSAP.) 9-1-1 calls are intrastate calls and it should be the responsibility of the providers to deliver 9-1-1 calls to the state 9-1-1 system and network/ESInet, no matter where the providers choose to process and route the calls. As long as all effectively competitive providers are burdened with the same cost elements for routing, transport and handling of 9-1-1 calls, none will have a competitive advantage vis-à-vis the others.

Respectfully submitted,

BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY

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